

MINUTES
TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS
Thursday, February 11, 2016

Board Members present: R.Scott Wyman, Chairman, Andrew Black, Sally Pierce, Amanda Vigue, Christian Lewis, and Ron Copp, Sr.

Absent: Mike Martin & Matt Manahan

Staff present: Town Manager Shane, Code Enforcement Officer Bill Longley, Town Attorney Alyssa Tibbetts

I. Meeting called to order at 7:03 p.m.

II. A request for interpretation of the Code Enforcement Officer's determination regarding failure to receive a demolition and expiration of a building permit for construction of a residence on said property.

Mr. Copp said that he would recuse himself from voting because he is related to Elvin and Randy Copp.

Chairman Wyman asked for a vote for all those in favor of Mr. Copp recusing himself.

VOTE: UNANIMOUS

Attorney Joan Egdall, representing Randy Copp, said that the corrected notice of violation that was issued by the Code Enforcement Officer on January 20, 2016, was issued in error, in their opinion, for the following reasons:

- In regard to the building permit and the IRC, Section 105.1, both require that there is an application for a building permit. Mr. Copp put a commercial building on the site then made renovations to the building to make it a residential building. Therefore, the IRC does apply as it is a residential code.
- The most recent building permit was issued on May 8, 2014 for this site. During submissions of plans to the town, the Copp's explained to the Code Enforcement Officer what was going to be built and how the structure was going to change over time. A plot plan was also submitted showing the location of the building on the site.
- One of the violations was for lack of work progressing during the 180 days of permit being issued. Ms. Egdall referred to photographs and dated building material invoices showing that work was progressing during this time.
- The Code Enforcement Officer never advised Mr. Copp that a demolition permit was required even when numerous documents were provided to the Code Enforcement Officer describing the purpose of the building and the intended use.
- The violation for permit inspection is unclear as there is nothing in the code or ordinance that requires a request for an inspection be made to the Code Office during any specific time.

- Ms. Egdall referred to a photo of the gate and no trespassing sign that Mr. Copp installed on his property. Mr. Copp notified the Code Enforcement Officer and Town Manager on several occasions to advise them that the property was under no trespass, Mr. Copp said that if the town needed to enter his property for inspection purposes, he would allow them access. Ms. Egdall showed photographs of the Town Manager's vehicle entering the property without Mr. Copp's knowledge or permission.

Ms. Egdall requested that the Board review the Notice of Violation and interpret it accordingly.

Randy Copp said that there was an error on one of the architect's documents that stated that his project had a 2 car garage. It is has a 3 car garage. He requested that be noted for the record.

Mr. Copp said that the building code states that if work is not started within 180 days, the building permit becomes void. An extension request can be made to the Code Enforcement Officer for up to 180 days. He did not ask for a 180 day extension because he can prove that work was being done. He does not understand why he got a violation for having an expired building permit.

In regard to the demolition violation, Mr. Copp said that he was not notified that he was in violation until October of 2015. On August 15, 2011 he submitted an engineering letter that clearly states how the building was to be modified. The Code Enforcement Officer was aware of this because he required a drawing of the structure showing the modifications. He feels that there have been no violations on his part.

Mr. Copp said that he has posted his entire property with no trespass signs because of harassment issues on the property. There is a locked gate as he feels that he has the right to protect his property and himself. He notified town staff that they must contact himself or Elvin to enter the property. He requested that the Code Enforcement Officer to come inspect the foundation. 2-3 weeks later, the Code Officer and Town Manager entered his property, without his knowledge, to do the inspection. He had not been notified that they were coming to do the inspection. He referenced 2 other incidents when the Code Officer and Town Manager entered the property without his knowledge. Mr. Copp said that he has told town staff, on many occasions that if they think that he is in violation at any time, please call and meet him at the gate. He would have let them in to discuss any issues at any time.

Mr. Black said that this board does not have authority to rule on the trespassing issue that has been brought up. There is no legal relevance to this proceeding.

Attorney Egdall said that if town staff obtained potential violation information while trespassing, that information would have been obtained illegally, therefore would not be permissible.

Mr. Lewis said that he also feels that this board would not make that determination.

Code Enforcement Officer, Bill Longley, said these issue have been going on for many years. Randy has stated that he is building his house on his father's property (Elvin Copp). When the building permit was issued in May 2014, Elvin Copp shook the hands of himself and the Town Manager, and rescinded all reference to previous orders of non-entrance to the property. If Elvin were here this evening, he would testify to this. This explains the "trespassing" issue.

Mr. Longley gave an overview of a memo that he presented to the Town Council in October 2105 in which he advised them the issues with the project:

1. Issuance of permit dated 5-08-14 after a Notice of Violation and order of corrective action.
2. Email from Bill Shane dated 5-07-14. If no building permit in place to issue a Stop Work Order.
3. Email dated May 14th 2013 permits were expired from lack of work or verification of work.
4. Reissuance of permit issued 9-24-2012 with plans and Engineer design after expiration of 8-30-2011 permit.
5. Issuance of 8-30-2011 permit with notation per plans as approved by Engineer and Hammond.
6. Issuance of new septic permit # 4855 dated 8-30-2011.
7. Engineers report date 8-25-2011 by Helen Watts.
8. Email with outline of items needed since 8-16-11 to obtain a permit.
9. Engineers report by SRG for foundation and supports.
10. E-mail from DEP in regards to issues at Copp property dated 5-19-2011.
11. NOTICE of VIOLATION Order for Corrective action dated 12-09-2010.
12. Email from Town Attorney in regards to Notice of Violation for Copp dated 11-05-2010.
13. Verbal STOP WORK ORDER dated 9-09-2010 noted on request to extend permit dated 1-05-2010.
14. Written request by Randy Copp to extend permit issued 7-28-2009 dated 1-05-2010.
15. State of Maine Notice of Intent to harvest trees dated 6-10-2010 “after the fact”.
16. Issued Town of Cumberland Timber Harvesting permit dated 5-04-2010 subject to requirement of obtaining “after the fact State Forestry Notification.
17. Permit issued 7-28-2009 for a 28 X 44 Single Family house.
18. Private Way approved per plans submitted dated 7-23-2009.
19. STOP WORK ORDER working on road and no Town Private Way Plans yet approved or permits issued for use on property.
20. Assessment record of property purchased by Elvin Copp on 10-03-2007.

Mr. Longley said that the stop work order centers on the fact that the building does not comply or has not been properly permitted as it was built. From discussions in October and in November, the town still has not received revised plans showing the dormers or any information that they wish to proceed. There has been a Consent Agreement approved by the Town Council, which the Copp's have not yet executed, but instead choose to challenge the fact that they built something that was not permitted.

Chairman Wyman opened the Public Hearing and asked if there were any members of the general public who would like to speak for in favor or against this appeal.

Public discussion: Tammy Marston of 26 Mystical Way said that this has been a long process and she feels that Mr. Copp has a tendency to beg for forgiveness instead of asking for permission. Her concern is that he has not been a good neighbor. Before his project began, there was a beautiful pond on her property that had a lot of wildlife. After Mr. Copp purchased the property, he killed the beaver that lived there and broke the beaver dam. She is tired of him doing things like this and apologizing after the fact. Everyone else has to follow rules and go through the process. Mr. Copp should be made to do the same.

Attorney Alyssa Tibbetts (Town Attorney representing the Code Enforcement Officer) will address a couple of the legal arguments that have been raised from the town's perspective:

- In regard to the progress that has been shown by the applicant and the notion that any progress satisfies the element that something has to be done within 180 days or the building permit expires, the code provides that the permit becomes invalid unless the work authorized by such permit is commenced within 180 days. The key here is that the work must have been authorized by the original date in order for it to count as progress.
- In regard to refusing occupancy as though that is an exclusive remedy of the Code Enforcement Officer in this case. It is not. The only remedy is not that the Code Enforcement Officer allow an applicant to make changes to a project and wait until he asks for occupancy, then tell him that since there have been changes made that the plan needs to be amended. It would not be reasonable to have a code office that operated in that manner.
- The Code Enforcement Officer does not need permission from a property owner to simply enter onto a property to conduct an inspection.
- Changes to any plan can happen and the town has always said that approval simply has to be obtained for any changes.
- The role and obligation of the Code Enforcement Officer is to ensure that codes are being met, to check progress of projects that are underway, and to make sure that there are no violations.
- The board's role this evening is to determine whether or not the notice of violation was appropriate and whether the Code Enforcement Officer had a reasonable basis, under the code, to determine if a violation existed.

Town Manager, Bill Shane, explained that he had an agreement with Randy Copp in regard to the driveway. They set stakes 200 feet apart and Randy would limit his excavation to the area within the 200 foot perimeter leading up to the house. Mr. Shane said that he typically receives 3-5 complaints every year from the residents on Upper Methodist road who complain about dump trucks traveling back and forth, noise and dust. He then has to go inspect to be sure that the work being done is inside the perimeters agreed to with Mr. Copp.

Mr. Black asked what the town understood in regard to the use of the commercial/manufactured structure. Was it to remain there and built around or demolished?

Mr. Longley responded that his understanding was that the commercial/ manufactured building was to be put on a foundation then torn down to the floor. This made no sense to him as a building inspector. He has never seen this done before and did not understand the purpose of this.

Mr. Lewis asked Mr. Longley if during the time period of May – November 2014 was there any progress being made within the permit for that time period.

Mr. Longley said that the town had no knowledge of any progress during that time period and no requests for inspections. The burden is upon the permittee to request an extension. Regardless of the permit expiring or not, the building is not built in conformance with the plans (part of the

original structure was removed, dormers were added and rubble was added to a portion of the foundation).

Attorney Egdall said that her understanding of Mr. Longley's comments is that he not certain if there was progress made because he did not look at the photos presented to him by the Copp's, and whether or not progress is made is not the burden of the applicant, based on the ordinance and the code that is currently in place in Cumberland. There is also no duty on the applicant to request an inspection or notify the Code Enforcement Officer of the progress every 6 months, according to the ordinance or code. It does say, however, that if no progress is made, the permit can be extended upon the request of the permittee. A photo of the building as it stands today (except for the 3 dormers) is substantially similar to the drawings that Hammond Lumber produced in 2011 that Mr. Longley had as part of the permit application. Mr. Longley said that he did not understand the removal of the original structure. It was all laid out very clearly in the engineering letter, the architect letter, and the Hammond Lumber design (except for the dormers). She feels that the decision of the board this evening should be whether or not, given the language of the ordinance, this notice of violation cites a valid and appropriate violation of the ordinance as it is written now.

Chairman Wyman asked Attorney Egdall if work was stopped at the issuance of the stop work order.

Attorney Egdall responded, yes.

Chairman Wyman asked if we agree that the building is not exactly how it started.

Attorney Egdall responded that it is not as it started.

Mr. Lewis asked Attorney Egdall where in any of the plan materials it talks about the removal of the walls on the original, manufactured structure and rebuilding new walls.

Attorney Egdall referred to a letter from SRG that states "a new 2 x 6 x 16 on center stud wall along the perimeter of the existing structure must be constructed to extend from the top of the existing foundation up to the top of the first floor level".

Randy Copp added that the engineer report clearly showed the removal of the original walls and construction of new walls. Mr. Longley was aware of this.

Attorney Egdall reiterated that Mr. Copp was never told that he would need a demolition permit, even though Mr. Longley knew that the roof and walls of the original structure were to be removed.

Mr. Black asked Mr. Copp what the Code Enforcement Officer is requiring him to do and what will it cost him in order to be in compliance.

Mr. Longley has asked for an updated plan that shows the dormers on the building. This is done and signed by his engineer (but not turned into the town yet). Mr. Longley has also asked for an engineer plan for the "rubble" in the garage area. This has been submitted to the town. Mr. Copp said that in regard to the unsigned Consent Agreement, it is not the \$1,000 fine that he has issue

with. It is the fact that they would be agreeing with Mr. Longley's opinion that they did something wrong. They know that they did not do what Mr. Longley alleged they did.

Mr. Black asked Mr. Copp what the cost would be to him if he proceeded with the 3 corrective actions.

Mr. Copp responded that he has no problem with submitting the information that Mr. Longley requested and moving forward. He does not agree with the notice of violation. That is why we are here tonight, because it is wrong. This is about principle. He has done nothing wrong. It would be less expensive for him to pay a new building permit fee than to go through this process.

Mr. Black asked Mr. Copp if he has received any indication from the town that his after-the-fact request for a permit would not be approved.

Mr. Copp replied that Mr. Longley told him that when he submitted the updated building and engineering plans and paid the new building permit fee, that he would issue him a new building permit.

Mr. Lewis asked Mr. Copp if he agrees that if nothing else had happened, that he realizes that he has to submit a new plan to reflect the dormers.

Mr. Copp said that he agrees with that, but that does not constitute a new building permit. The dormers do not change the structure or square footage. Amended building plans should suffice. The building permit did not expire.

Mr. Black asked what if the board agreed that the building permit did not expire, but the building was not in conformance and the corrective actions do not go beyond requesting conformance with the original plans. Would that be an acceptable resolution?

Mr. Egdall said that would be an acceptable resolution. Their argument is that the building permit did not expire, so that would be the finding that they are hoping for.

Chairman Wyman said that his concern is that there are photos starting in October of 2014, which is just within the window of no action taken within 6 months when the project was actually in motion. There is also no evidence provided that anything was done in 2015.

Mr. Copp said that he agrees with that point. He can prove progress was made in 2015. There has been no work done since the first notice of violation was issued in October 2105.

Mr. Longley said that this is a very confusing project. It is a project that has not gone well from the start. Documents could have been produced in November and the town would have been satisfied. The notice of violation is consistent with the practices of the Code Enforcement Office for buildings that have not been inspected and buildings where work being done has not been verified. The notice of violation is a precursor to further action by the town if the Town Council so chooses.

Chairman Wyman asked the board if they have any questions.

Mr. Black asked Mr. Longley if there is any question that construction began on this project before the initial application expired.

Mr. Longley said no, he is not contesting that.

Mr. Black said that from what we know now, all indications are that construction occurred and the initial permit would not have expired on November 8, 2014.

Mr. Longley said that is correct.

Mr. Black asked Mr. Longley if he had any evidence that there was continuous construction after that.

Mr. Longley said that he has no knowledge, but has seen photographs from December 2014 that were similar that the photo that he took in September 2015. Evidence would have to be produced to show how the project has moved forward.

Mr. Black asked if it is their burden to prove that work progressed or if it is Mr. Longley's burden to prove that they have not progressed.

Mr. Longley said that the burden is on the Copp's to prove in a Court of Law.

Mr. Black asked Mr. Longley if at any time, he was told that the walls of the original, manufactured structure, would stay standing or was that Mr. Longley's interpretation from the permit and attached plans.

Mr. Longley said that based on documents that he reviewed, it was his understanding that the purpose of using the manufactured structure was to benefit from the use of the structure, not just the floor. It was never discussed that Mr. Copp would be using only the floor. The discussions were around the money savings in using that commercial, manufactured structure.

Mr. Lewis asked Mr. Copp or his attorney if they had any specific evidence that Mr. Copp provided to the Code Enforcement Officer during the May – November 2014 time period that shows work progress.

Mr. Copp said that he was never asked to show progress. The only request that he got from the town was that a photo be sent when the roof trusses were set. He sent that to the Town Manager November 13, 2014 and could reproduce it if need be.

Mr. Black asked Mr. Copp how much work has been done since 2014.

Mr. Copp said he was working on subflooring and interior walls beginning in May 2015. He finished working on the roof in January and did not work on it again until May 2015.

Mr. Black asked Mr. Longley when he determined that there had been a violation on this project.

Mr. Longley said that he realized that there had been no inspections requested and he had not been invited to the site. The assumption was that no work had been done. He contacted Mr.

Copp on numerous occasions to come meet with him prior to the notice of violation being sent. The Copp's said that they were not available to meet on numerous occasions.

Mr. Black said that a lot of this has to do with a failure to communicate and some ambiguous documents. In this case, the Code Enforcement Officer had a limited amount of information and with that made his best effort to try to get some communication going. The board's job is to try to figure out the right decision. He thinks that there were some changes to the project that were not communicated to the Code Enforcement Officer.

The other board members agreed that lack of communication seems to be the main issue here.

Motion by Mr. Black to uphold the Code Enforcement Officer's Notice of Corrective Notice of Violation and Order for Corrective Action, except for his finding that the permit had expired.
VOTE: 5-0-1 (Mr. Copp abstained) MOTION PASSES

Chairman Wyman addressed Mr. Copp stating that he needs to complete the three corrective actions and he needs to meet with the Code Enforcement Officer and Town Manager and have a discussion to avoid any future confusion with the project as it moves forward.

III. Administrative Matters: Approval of Minutes of the January 7, 2016 meeting.
Tabled to next meeting.

IV. Adjournment:
Chairman Wyman adjourned the meeting at 9:40 p.m.

A TRUE COPY ATTEST:

R. Scott Wyman, Board Chair

Brenda Moore, Recording Secretary
*(Minutes prepared from recording.
Not present at meeting)*